FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1979-48

of

COMMISSIONER MAX L. FRIEDERSDORF

The Commission's decision today flies in the face of our constitutional guarantee of free speech and ignores the Supreme Court's interpretations of the very statutory provisions on which the Commission bases its decision. A corporate advertisement, in a general circulation newspaper, stating "Please Register to Vote" and containing the corporation's name in the lower corner, does not constitute a contribution or expenditure in connection with a Federal election. Such an advertisement is pure and protected, speech, which was not meant to be fettered by the Federal Election Campaign Act, or its predecessors.1/ The language contained in Section 441b of the Act precludes any corporation from making contributions or expenditures in connection with candidate elections.2/ As the Supreme Court stated in United States v. International Union of United Auto Workers, 352, U.S. 567(1957): The evil at which Congress has struck in § 313 is the use of corporate or union funds to influence the public at large to vote for a particular candidate or for a particular party. U.S. v. U.A.W., at 569. Section 441b is not a blanket prohibition against corporate speech on general issues of public concern. A dichotomy between permissible non-partisan corporate speech (2 U.S.C. SS 431(f)) and impermissible partisan corporate speech and activities (2 U.S.C. SS 441 b) is inherent in the statute and the Commission's regulations relating to Section 441b. The definitions of "expenditure," as contained in the Act, evidence this dichotomy. In SS 441b an "expenditure" is defined as: any direct or indirect payment,...or gifts of money,...or anything of value ...to any candidate, campaign committee, or political party or organization...; (emphasis added) 2 U.S.C. § 441b(b)(2), while § 431(f) specifically exempts "non-partisan activity designed to encourage individuals to register to vote" from the general definition of "expenditure." 2 U.S.C. §431(f)(4)(B). Following this distinction, the Commission's regulations contain specific sections on non-partisan and partisan corporate communications. See 11 C.F.R. §§114.4 and 114.3, respectively. Under Commission regulations relating to "non-partisan" corporate communications, a corporation may finance non-partisan communications with the general public relating to voter registration. 11 C.F.R. & 114.4(c) (2).3/ The advertisement proposed by Rexnord does not express any candidate preference or party advocacy. "Please Register to Vote" is unequivocal and direct. It is a corporate statement on an issue of general public interest and appears to fall squarely within the statutory exemption from the general definition of

expenditure contained in 2 U.S.C. SS 431(f)(4). This distinction between Government regulation of corporate support of political candidates or parties and regulation of corporate speech on non-candidate political campaigns was recognized by the Supreme Court in First National Bank of Boston v. Bellotti, 98 S.Ct. 1407 1978). There the right of a corporation to speak on referenda questions was distinguished from any right of a corporation to participate in political campaigns for public office. "Our consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of (corporate) participation in a political campaign for election to public office." Bellotti, footnote 26, at 1429. The Commission's decision in Advisory Opinion 1979-48 apparently was predicated on the opinion that Rexnord's proposed activity was not within the specifically enunciated statutory and regulatory exemptions from the Act's general prohibition against corporate contributions and expenditures. However, the fact that an activity was not specifically approved by a piece of legislation does not mean that such activity is thereby prohibited - particularly when the activity falls within the realm of a constitutional guarantee, such as free speech. Section 441b of the Federal Election Campaign Act cannot be interpreted or implemented in a vacuum. It must be interpreted in the context of previous legislation and judicial statements relating to the permissibility of corporate activity in connection with Federal elections, and implemented with an awareness of our constitutional guarantees. The Commission's ruling ignores such guarantees, and I, for one, cannot join in such nearsighted statutory construction.

October 31, 1979

1/ 34 Stat. 864 (1907), 43 Stat. 1070 (1925), 57 Stat. 163 (1943), 61 Stat. 159 (1947), 86 Stat. 10 (1972), 90 Stat. 490 (1976).

2/ It is unlawful for...any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representatives in, or a Delegate or a Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices,.... 2 U.S.C. § 441b(a).

3/ Although Rexnord's proposed advertisement does not fall specifically within the voter registration information referred to in 11 C.F.R. SS 114.4(c)(2), it seems to fall within the intent of such regulation.